

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

UNITED STATES OF AMERICA

v.

CRIMINAL NO. 13-CR-20894

D-1 ZIA HASSAN,
D-2 NATHAN MILLER, and
D-3 WILFRED GRIFFITH

HONORABLE SEAN F. COX

VIO: 18 U.S.C. § 1349
18 U.S.C. § 371
18 U.S.C. § 981
18 U.S.C. § 982

Defendants.

FIRST SUPERSEDING INDICTMENT

THE GRAND JURY CHARGES:

General Allegations

At all times relevant to this First Superseding Indictment:

The Medicare Program

1. The Medicare program was a federal health care program providing benefits to persons who were over the age of 65 or disabled. Medicare was administered by the Centers for Medicare and Medicaid Services (“CMS”), a federal agency under the United States Department of Health and Human Services. Individuals who received benefits under Medicare were referred to as Medicare “beneficiaries.”

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2. Medicare was a “health care benefit program,” as defined by Title 18, United States Code, Section 24(b).

3. The Medicare program included coverage under two primary components, hospital insurance (“Part A”) and medical insurance (“Part B”). Part A covered physical therapy, occupational therapy, and skilled nursing services if a facility was certified by CMS as meeting certain requirements. Part B of the Medicare Program covered the cost of physicians’ services and other ancillary services not covered by Part A. The home health services at issue in this First Superseding Indictment were covered by Part A.

4. National Government Services (“NGS”) was the CMS intermediary for Medicare Part A in the State of Michigan. TrustSolutions LLC was the Program Safeguard Contractor for Medicare Part A and Part B in the State of Michigan until April 24, 2012, when it was replaced by Cahaba Safeguard Administrators LLC.

5. Payments under the Medicare program were often made directly to a provider of the goods or services, rather than to a beneficiary. This occurred when the provider submitted the claim to Medicare for payment, either directly or through a billing company.

6. Upon certification, the medical provider, whether a clinic, individual, or other health care provider that provided services to Medicare beneficiaries, was

able to apply for a Medicare Provider Identification Number ("PIN") for billing purposes. A health care provider who was assigned a Medicare PIN and provided services to beneficiaries was able to submit claims for reimbursement to the Medicare contractor/carrier that included the PIN assigned to that medical provider. A Medicare claim was required to set forth, among other things, the beneficiary's name, the date the services were provided, the cost of the services, and the name and identification number of the physician or other health care provider who had ordered the services. When an individual medical provider was associated with a clinic, Medicare Part B required that the individual provider number associated with the clinic be placed on the claim submitted to the Medicare contractor.

7. By becoming a participating provider in Medicare, enrolled providers agreed to abide by the policies and procedures, rules, and regulations governing reimbursement. To receive Medicare funds, enrolled providers, together with their authorized agents, employees, and contractors, were required to abide by all provisions of the Social Security Act, the regulations promulgated under the Act, and applicable policies, procedures, rules, and regulations issued by CMS and its authorized agents and contractors. Health care providers were given and provided with online access to Medicare manuals and services bulletins describing proper billing procedures and billing rules and regulations.

8. Health care providers could only submit claims to Medicare for services they rendered. Medicare regulations required health care providers enrolled with Medicare to maintain complete and accurate patient medical records to verify that the services were provided as described on the claim form. These records were required to be sufficient to permit Medicare, through its contractors, to review the appropriateness of Medicare payments made to the health care provider.

9. Under Medicare Part A and Part B, home health care services provided were required to be reasonable and medically necessary to the treatment of the patient's illness or injury. Payment for home health care services can be made only if a physician certifies the need for services and establishes a Plan of Care. Home health care services that were not certified by a physician or were not provided were not reasonable and necessary.

10. Medicare coverage for home health care services requires that the following qualifying conditions, among others, be met: (a) the Medicare beneficiary is confined to the home; (b) the beneficiary needs skilled nursing services, physician therapy, or occupational therapy; (c) the beneficiary is under the care of a qualified physician who established a written Plan of Care for the beneficiary, signed by the physician and by a Registered Nurse ("RN"), or by a qualified physical therapist if only therapy services are required from the home

health agency; (d) skilled nursing services or physical therapy services are provided by, or under the supervision of, a licensed RN or physical therapist in accordance with the Plan of Care; and (e) the services provided are medically necessary.

11. To determine the proper level of care for a beneficiary, Medicare requires that home health agencies perform a comprehensive initial evaluation, which includes an assessment of the patient that accurately reflects the patient's current health and provides information to measure the patient's progress. Medicare requires that: (1) an RN or a qualified physical therapist perform the initial patient assessment on an OASIS form; and (2) the home health agency maintain the clinical record of services they provided to each beneficiary, including signed and dated clinical and progress notes recording each home visit made to the beneficiary. The clinical and progress notes must include the identity of the individual who performed the visit, the name of the patient, and the type of service performed.

12. Medicare payment to home health agencies is based on a prospective payment system, which pays a base payment that can be adjusted to reflect the severity of the beneficiary's condition and care needs. Medicare will pay 60 percent of the cost of the home health episode once the patient has been evaluated and a Plan of Care determined. Medicare pays home health agencies for every 60-

day “episode” of services provided to each beneficiary. At the end of the episode, Medicare pays the balance based on how many services the home health agency provided in the episode. If the beneficiary still has a medical need for care at the end of an episode, a second episode of services can be provided. Each subsequent episode must be based on a new OASIS, wherein the beneficiary’s physician and RN or qualified physical therapist re-certifies the beneficiary’s medical condition, need for services, and a new Plan of Care. The patient’s physician and an RN or qualified physical therapist from the home health agency must sign the OASIS re-certification.

13. To receive reimbursement for a covered service from Medicare, a provider must submit a claim, either electronically or using a form (*e.g.*, a CMS-1500 form or UB-92), containing the required information appropriately identifying the provider, patient, and services rendered, among other things.

14. A home health agency was an entity that provided health services, including but not limited to skilled nursing, physical therapy, occupational therapy, and speech pathology services to homebound patients.

The Home Health Agency

15. Cherish Home Health Services, LLC, (“Cherish HH”) was a Michigan corporation doing business at 361 Inkster Road, 2nd Floor, Inkster, Michigan 48141. Cherish HH was a home health agency that purportedly provided in-home

physical therapy, occupational therapy, speech pathology, and skilled nursing services to patients. Cherish HH was a Medicare provider and submitted claims directly to Medicare. ZIA HASSAN owned and controlled Cherish HH and was the President of Cherish HH.

The Defendants

16. ZIA HASSAN, a resident of Washtenaw County, Michigan, was the owner, controller, and President of Cherish HH. He also was a physical therapist licensed in the State of Michigan.

17. NATHAN MILLER, a resident of Wayne County, Michigan, was a patient recruiter and marketer for Cherish HH.

18. WILFRED GRIFFITH, a resident of Wayne County, Michigan, was a patient recruiter for Cherish HH and an unlicensed physician assistant, who represented to others that he was a physician.

COUNT 1

(18 U.S.C. § 1349—Health Care Fraud Conspiracy)

D-1 ZIA HASSAN

D-2 NATHAN MILLER

D-3 WILFRED GRIFFITH

19. Paragraphs 1 through 18 of the General Allegations section of this First Superseding Indictment are re-alleged and incorporated by reference as though fully set forth herein.

20. From in or around November 2009 and continuing through the present, the exact dates being unknown to the Grand Jury, in Wayne County, in the Eastern District of Michigan, and elsewhere, the defendants, ZIA HASSAN, NATHAN MILLER, and WILFRED GRIFFITH did willfully and knowingly combine, conspire, confederate, and agree with each other and others, known and unknown to the Grand Jury, to violate Title 18, United States Code, Section 1347, that is, to execute a scheme and artifice to defraud a health care benefit program affecting commerce, as defined in Title 18, United States Code, Section 24(b), that is, Medicare, and to obtain, by means of materially false and fraudulent pretenses, representations, and promises, money and property owned by, and under the custody and control of, said health care benefit program, in connection with the delivery of and payment for health care benefits, items, and services.

Purpose of the Conspiracy

21. It was a purpose of the conspiracy for defendants ZIA HASSAN, NATHAN MILLER, WILFRED GRIFFITH, and others to unlawfully enrich themselves by, among other things: (a) submitting false and fraudulent claims to Medicare; (b) offering and paying kickbacks and bribes in the forms of cash payments to Medicare beneficiaries for the purpose of such beneficiaries arranging for the use of their Medicare beneficiary numbers by the conspirators as the bases of claims filed for physical therapy and other services; (c) soliciting and receiving

kickbacks in return for arranging for the furnishing of services for which payment may be made by Medicare by providing Medicare beneficiary numbers and information, which formed the basis of claims filed for physical therapy, occupational therapy, and other services; (d) concealing the submission of false and fraudulent claims to Medicare, the receipt and transfer of the proceeds from the fraud, and the payment of kickbacks; and (e) diverting proceeds of the fraud for the personal use and benefit of the defendants and their co-conspirators.

Manner and Means

The manner and means by which the defendants and their co-conspirators sought to accomplish the purpose of the conspiracy included, among others, the following:

22. ZIA HASSAN and others would maintain a valid Medicare provider number for Cherish HH to submit Medicare claims for the cost of physical therapy, occupational therapy, and other services that were medically unnecessary and were not provided.

23. ZIA HASSAN and others would control the day-to-day operations of Cherish HH.

24. ZIA HASSAN, NATHAN MILLER, and others would arrange for the offering of and offer and provide kickbacks, bribes, and other inducements to Medicare beneficiaries who were purported patients of Cherish HH. The Medicare

beneficiaries would receive cash or other remuneration in exchange for signing documents making it appear that they had received the treatments being billed to Medicare when, in fact, such treatments were medically unnecessary and were not provided.

25. ZIA HASSAN and others would offer and provide kickbacks, bribes, and other inducements to NATHAN MILLER and other beneficiary recruiters, who would themselves offer and provide kickbacks, bribes, and other inducements to Medicare beneficiaries to become purported patients of Cherish HH. The Medicare beneficiaries would receive cash or other remuneration in exchange for signing documents making it appear that they had received the treatments being billed to Medicare when, in fact, such treatments were medically unnecessary and were not provided.

26. ZIA HASSAN would offer and provide kickbacks, bribes, and other inducements to WILFRED GRIFFITH for his referral of Medicare beneficiaries to Cherish HH, when WILFRED GRIFFITH was not a licensed physician and was not licensed to treat patients or refer them for any medical services.

27. ZIA HASSAN would pay physicians and WILFRED GRIFFITH to sign medical documentation ordering physical therapy and other services purportedly provided and billed to Medicare by Cherish HH, which were medically unnecessary and were not provided.

28. ZIA HASSAN and others would fabricate and falsify medical documents reflecting or supporting purported physical therapy and other services billed to Medicare that were medically unnecessary and were not provided. Those documents included home health certifications and Plans of Care, physical therapy notes, evaluations, recertifications, discharges, and other records for therapy that would be billed to Medicare by Cherish HH, making it appear that physical therapy and other services had been provided when, in fact, they had not.

29. ZIA HASSAN would pay an unlicensed individual to fabricate and falsify physical therapy revisit notes for Medicare beneficiaries who did not receive physical therapy services. ZIA HASSAN would instruct the unlicensed individual to sign ZIA HASSAN's name to the file as if ZIA HASSAN had provided the services when, in fact, the services were medically unnecessary and were not provided.

30. Cherish HH, under the direction and control of ZIA HASSAN and others, would submit claims to Medicare seeking reimbursement for the cost of physical therapy and other services purportedly provided to Medicare beneficiaries that were not, in fact, rendered.

31. ZIA HASSAN, NATHAN MILLER, WILFRED GRIFFITH, and others would cause Cherish HH to submit claims to and receive from Medicare over \$4.4 million for the cost of physical therapy and other services.

32. ZIA HASSAN, NATHAN MILLER, WILFRED GRIFFITH, and others would transfer and disburse, and cause the transfer and disbursement of, monies from the various corporate accounts of Cherish HH to themselves and others.

All in violation of Title 18, United States Code, Section 1349.

COUNT 2
(18 U.S.C. § 371—Conspiracy to Pay and Receive Kickbacks)

D-1 ZIA HASSAN
D-2 NATHAN MILLER
D-3 WILFRED GRIFFITH

33. Paragraphs 1 through 18 of the General Allegations section of this First Superseding Indictment are re-alleged and incorporated by reference as though fully set forth herein.

34. From in or around November 2009 and continuing through the present, the exact dates being unknown to the Grand Jury, in Wayne County, in the Eastern District of Michigan, and elsewhere, the defendants, ZIA HASSAN, NATHAN MILLER, and WILFRED GRIFFITH did willfully and knowingly combine, conspire, confederate, and agree with others, known and unknown to the Grand Jury, to commit certain offenses against the United States, that is,

- (a) to violate Title 42, United States Code, Section 1320a-7b(b)(2)(A) by knowingly and, willfully offering or paying any remuneration (including any kickback, bribe, or rebate) directly or indirectly,

overtly or covertly, in cash or in kind in return for referring an individual to a person for the furnishing or arranging for the furnishing of any item or service for which payment may be made in whole or in part by Medicare, a Federal health care program as defined in Title 18, United States Code, Section 24(b); and

- (b) to violate Title 42, United States Code, Section 1320a-7b(b)(1)(A) by knowingly and willfully soliciting or receiving any remuneration (including any kickback, bribe, or rebate) directly or indirectly, overtly or covertly, in cash or in kind in return for referring an individual to a person for the furnishing or arranging for the furnishing of any item or service for which payment may be made in whole or in part by Medicare, a Federal health care program as defined in Title 18, United States Code, Section 24(b).

Purpose of the Conspiracy

35. It was a purpose of the conspiracy for ZIA HASSAN, NATHAN MILLER, WILFRED GRIFFITH, and others to unlawfully enrich themselves by offering, paying, soliciting, and receiving kickbacks and bribes in exchange for, among other things: (a) the use of Medicare beneficiary numbers; (b) physician referrals for home health care services; and (c) signatures on false documents that would be used to support Medicare billings.

Manner and Means

The manner and means by which the defendants sought to accomplish the purpose of the conspiracy included, among other things:

36. ZIA HASSAN, NATHAN MILLER, and others would arrange for the payment of cash kickbacks to Medicare beneficiaries and pay Medicare beneficiaries cash kickbacks for the use of those beneficiaries' Medicare information to bill Medicare for home health services purportedly provided by Cherish HH.

37. ZIA HASSAN, NATHAN MILLER, and others would arrange for the payment of and pay Medicare beneficiaries to sign false medical documents reflecting or supporting purported physical therapy and other services billed to Medicare.

38. ZIA HASSAN would arrange for the payment of and pay physicians and WILFRED GRIFFITH for referrals for home health care services.

39. ZIA HASSAN and others would arrange for the payment of and pay individuals to fabricate and falsify medical documents, including physical therapy revisit notes, reflecting or supporting purported physical therapy and other services billed to Medicare that were medically unnecessary and were not provided.

Overt Acts

In furtherance of the conspiracy, and to accomplish its purposes and objects, at least one of the conspirators committed, or caused to be committed, in the Eastern District of Michigan, the following overt acts, among others:

40. In or around 2011, ZIA HASSAN met with a co-conspirator physician to discuss the signing of referrals to Cherish HH for patients who the co-conspirator physician had never treated so that Cherish HH could bill Medicare.

41. In or around 2011, ZIA HASSAN paid a co-conspirator physician approximately \$12,000 in cash for patient referrals.

42. In or around 2010, ZIA HASSAN met with NATHAN MILLER to discuss the recruitment of Medicare beneficiaries for home health care billing.

43. In or around March 2011, ZIA HASSAN paid NATHAN MILLER \$250 in cash for referring a Medicare beneficiary to Cherish HH for home health care services.

44. In or around December 2011, ZIA HASSAN paid WILFRED GRIFFITH a \$2,000 check for patient referrals to Cherish HH.

All in violation of Title 18, United States Code, Section 371.

FORFEITURE ALLEGATIONS
**(18 U.S.C. § 981(a)(1)(C) and 28 U.S.C. § 2461;
18 U.S.C. § 982—Criminal Forfeiture)**

45. The allegations contained in Counts 1 and 2 of this First Superseding Indictment are re-alleged and incorporated by reference as though fully set forth herein for the purpose of alleging forfeiture against defendants ZIA HASSAN, NATHAN MILLER, and WILFRED GRIFFITH pursuant to Title 18, United States Code, Sections 981 and 982, and Title 28, United States Code, Section 2461.

46. Pursuant to Title 18, United States Code, Section 982(a)(7) and 981(a)(1)(C), together with Title 28, United States Code, Section 2461, upon being convicted of violating Title 18, United States Code, Section 1349 as charged in Count 1 of this First Superseding Indictment, the convicted defendant(s) shall forfeit to the United States any property, real or personal, that constitutes or is derived, directly or indirectly, from gross proceeds traceable to the commission of the offense.

47. Pursuant to Title 18, United States Code, Section 982(a)(7) and 981(a)(1)(C), together with Title 28, United States Code, Section 2461, upon being convicted of violating Title 18, United States Code, Section 371 as charged in Count 2 of this First Superseding Indictment, the convicted defendant(s) shall forfeit to the United States any property, real or personal, that constitutes or is

derived, directly or indirectly, from gross proceeds traceable to the commission of the offense.

48. Money Judgment: A sum of money equal to at least \$4,487,080.77 in United States currency, or such amount as is proved at trial in this matter, representing the total amount of proceeds obtained as a result of defendants' violations of Title 18, United States Code, Sections 1349 and 371 as alleged in Counts 1 and 2 of this First Superseding Indictment.

49. Substitute Assets: If the property described above as being subject to forfeiture, as a result of any act or omission of the defendant:

- a. cannot be located upon the exercise of due diligence;
- b. has been transferred or sold to, or deposited with, a third party;
- c. has been placed beyond the jurisdiction of the Court;
- d. has been substantially diminished in value; or
- e. has been commingled with other property that cannot be subdivided without difficulty;

it is the intent of the United States, pursuant to Title 21, United States Code, Section 853(p) as incorporated by Title 18, United States Code, Section 982(b) and/or Title 28, United States Code, Section 2461, to seek to forfeit any other property of ZIA HASSAN, NATHAN MILLER, and WILFRED GRIFFITH up to the value of such property.

THIS IS A TRUE BILL.

s/GRAND JURY FOREPERSON

Grand Jury Foreperson

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